O/Electric/43

1943

File No.

Legal Department

A BRANCH

Subject:—

Opinions under the

Indian Electricity Act, 1910

124
C

O Electric /143

File No.

Gen. 194 c.

89-A

C O N T E N T S.

Legal Deptt. File No. O. Electricity /1943.

S. No.	Compilation No.	Subject.	Pages.
1.	O. No. 248/11-1-43.	Indian Electricity Act, 1910 - See 9(2) - sale of the Bagalkot Electricity Co. whether the view held by P.W.D. that the bid cannot be accepted and sale completed for the reason that the bid offered and accepted is less than the upset price is connect- etc.	1-4
2.	O. No. 881/5-2-43.	Sec. 52- Sudarshan Talkies, Hubli- As the Consumer is not willing to submit to arbitration, it would not be advisable to have recourse to it and the licensee should discontinue the supply	5-7 6
3.	O.Non, 884/5-2-43	Clause XI of the Schedule- Panvel Taluka Electrical Development Ltd.- whether the order that Co. should reduce themeter rent from As. 8 to As. 4 p.m. is ultra vires.	7-8
4.	O. No. 65-Confl./9-2-43	Sec. 4(2) - Whether a notice under - to the Licensee would be competant.	9-12
5.	O, No. 64- Cconfl./ 9-2-43	Secs. 3(1) and 4(2) - The Manmad Electric License, 1936- Issue of notice for failure to make adeguate arrangement for maintanuance and for taking an excessive load--- --	13-16.

C O N T E N T S.

Legal Deptt. File No. 3. Electricity/1943.

Sr. No.	Compilation No.	Subject.	Pages.
6.	O. No. 1723/10-3-43	Sec. 9(2)- The Savda Faizpur Electric License, 1939 - whether the view taken by the soli. that in view of cl. 5 of the trust deed, which provides that the Co. would asign and transfer to the trustees the leconse and its undertaking ~~the consent of Govt.~~ on after obtaining the consent of Govt. - the trust deed is valid and good- is ~~esunct~~ commect.	17-20
7.	O. No. 2340/29-3-43	Sec. 4(2)- Manmad Electric Licence Co. and Hubli Electric Licence- Notices to revoke their Licences	21-22
8.	O. No. 3563/15-5-43.	Dakore-Umreth Electric Licence, 1940- cl. 7A of - whether Govt. is bound to give any compensation to the Licensee for its loss in consequence of the Govt. dicision to refuse permission to commence supply of energy.	23-24
9.	R.I. No. 5405/3-5-43 O.No. 3889/31-5-43	Cl. XI of the Schedule Nadiad Electric Licence - levy of minimum charges - whether P.W.D. proposal to inform the applicant that the question may be settled mutually by the consumers with the Co. is in order.	25-26
10.	O. No. 5672/21-8-43	Cl. XV of the Schedule- Rule ~~81XV of the Schedule~~ 81(2)(a) of D. of I. Rules- Mahabaleshwar Electric Supply Co.- whether there would be any objection if the D.M. Satara, issues an order stopping supply of energy under rule- -	27-28

C O N T E N T S.

Legal Deptt. File No. O Electricity/1943.

Sr. No.	Compilation No.	Subject.	Pages.
11.	O. No. 6009/7-9-43	Sub cl. (2) of Cl. VI in the Sch. - whether the charge levied by the licensee is legitimate or whether the licencee is under direct obligation to renew the supply without any cost to the consumer. ----	29-30
12.	O. No. 6642/4-10-43	Sinnar Electric Supply Co. Ltd. - Interpretation of Govt. order No. 6041/36 dt. 11-3-43. levy of surcharge on meter rent charged by the Co. to the consumers.	31-34
13.	R.I. No. 9280/21-9-43 O.No. 6765/9-10-43	Dispute between GIPR and manmad Elec. supp Co. Ltd. - whether the Electrical Engineer to Govt. can be directed to appoint an arbitrator as requested by one of the parties.	35-38
14.	...I.No. 9987/ $\frac{18}{19}$ - 10-43 O. No. 8226 / 8-11-43	Sec. 21(2) - Dharwar Electric Supply Co. Ltd- (1) whether the sanctioned rates for supply of energy form part of the Conditions of Supply (2) whether Sec. 21(2) Governs the rates of supply of energy ---	39-42
15.	O. No. 4046/7-6-43	Sec. 9(2) - whether orders regarding consent under sec to the assignment and transfer by the Receiver of the Licence and its under taking by way of sale to Mr. s may be issued. a	43-44

PHL 7/8

NHD 7/8

Office of the R.L.A.

It appears that the Receiver appointed by the First Class Sub-Judge, Bijapur, for the sale of the Bagalkot Electricity Company undertaking and other property and the goodwill of Messrs. Gugwad & Co. applied to Government for pwa permission and consent under sectin 9(2) if the Indian Electricity Act, 1910 to sell the license and the undertaking. In reply he was informed that the party to whom the license and the undertaking was to be sold and who would be the next licensee should be in a position to exercise the powers and prform the obligations imposed under the license. The Receiver therefore made it a condition that the purchaser of the Bagalkot Electric License and the Electric concern should satisfy Government as to his financial stability and suitablity to hold the license and exercise the powers and perform the obligations under the license and with this view submit to Government an application through the Collector of Bijapur and get the requisite permission from Government. (See pp. 87, 110 ante and p. 5 of the loose papers). The property was auctioned on 30th November 1942 and the final bid of Rs. 2,27,000 offered by one Mr. K.G. Sardesai in the presence of the First Class Sub-Judge was accepted by the Receiver. The Purchaser through he the Collector has now applied to Government for permission under section 9(2) of the Indian Electricity Act. The P.W.D. considers that the bid cannot be accepted and sale completed for the reason that

~~that the bid cannot be accepted and sale completed for the reason ~~ that the bid offered and accepted is less than the upset price and that some partner of the dissolved ~~Semen~~ Company has threatened to file a suit to set aside the sale on the ground of certain irregularities in holding the auction sale. The R.L.A. is requested to advise.

2. Sub-section (2) of section 9 of the Indian Electricity Act, 1910 provides tht the licensee shall not at any time assign his license or transfer his undertaking or any part thereof by sale, mortgage, lease, exchange or otherwise without the previous consent of Government. The object of this provision as suggested by the P.W.D. at p. 110 ante is to enable Government to prevent the transfer sale or assignment of the license or undertaking to an undesirable and unsuitable person. Consequently what Government is concerned with in the present case is to consider whether Mr. K.C. Sardesai is a suitable person to hold the license and run the undertaking; and if he is found to be suitable there is no objection to Government granting the permission as prayed for. The transfer of the license or undertaking will be done by the Receiver only when the sale is c nfirmed and the sale cannot be confirmed unless all t'e objections, if any, confirming the sale are disposed of. The permission given by Government under section 9(2) will not by itsel f transfer the license and undertaking, Mr. Sardesai ~~asks~~ asks Government to transfr the license. But the license, if the sale is valid, has already been transferred to him by the sale, subject to Government's consent under section 9(2) of the Electricity Act.

Regarding the validity of the sale, it appears, from the papers recently forwarded to Government by Mr. K.G. Sardesai th t the final bid of Rs 2,27,000 offered by Mr. Desai is far in excess of the upset price of Rs. 1,87,377 (See p. 23 of the papers forwarded by Mr. Desai). Mr. Dandawati who has wired to Government not-to to grant permission states that he is going to apply to the court to annul the sale on the ground of irregularities (see p. 139 ante). But he has not yet stated what those irregualrities are. Unless those irregularities are material the sale cannot be set aside. However if at all Mr. Dandawati or any other person applied for an annulement of the sale, pending the disposal of such proceedings the sale would not be confirmed; and these proceedings need not deter Government from granting the necessary permission to the sale of the license and undertaking to Mr. Desai so that the sale might be completed immediately after the objections to the validity of the sale, if any, are disposed of and sale confirmed. The validity of the sale does not depend merely on Government's granting consent under section 9(2). If the court holds the transfer invalid on grounds of irregularities of sale, the fact that Government consented under section 9(2) will embarrass neither itself nor the court.

Remembrander of Legal Affairs.

U.R. to the P.W.D. , No. 248 dated the 11th Jan., 1943.

SSM / 6/7/56.

Submitted.

2. Please see R.L.A's opinion No. 8757, dated 29-10-42 and the office note underlying. (SlipA). Mr. Shikhare, propritor of the Sudarshan Talkies, pbli was informed by Govt. that it proposes to appoint the Electrical Engineer to Govt. to act as arbitrator on the terms mentioned at pp. 10-11 ~~ante~~ ante. Mr. Shikhare refusesto have the dispute settled by an Arbitrator (pp. 19-23 ante). P.W.D. is of the view that as the minimum charge demanded by the licensee coy. is disputed by the Consumer, the consumer and not ~~th~~ the Company should have approached Govt. for appointment of an arbitrator and as the Consumer is not willing to settle the dispute by arbitration, it is proposed to inform the licensee that it should cut off the supply. The ~~Electrical~~ Engg Engineer does not agree with the view of the P.W. D. that Mr. Shikahre should have applied to Govt. for arbitration but suggests that as the consumer is not willing to submit to arbitration, it would not be advisable to have reccurse to it and the licensee should discontinue the supply. The papers are shown to the R.L.A. before informing the Coy. accordingly.

The view taken by the Electrical Engineer to Govt. in para 2 of his endorsement at p. 25 ante is correct.

U.R. to P.W.D. No. 881, dt. 5-2-43.

SSM / 5/7/56.

Office of the R.L.A.

It appears that on the recommendation of the Advisory Committee under clause XI of the Schedule to the Indian Electricity Act, 1910, Government has ordered that the Panvel Taluka Electrical Development Co. Ltd., should reduce the meter rent from annas 8 to annas 4 per month. The question for the consideration of the R.L.A. is whether the order is ultra vires.

2. Sub-section (1) of section 23 of the Indian Electricity Act, 1910 empowers a licensee to make such charges for the supply of energy as may be agreed upon not exceeding the limits imposed by his license. Clause XI of the Schedule to the Act provides for alteration in the maximum charges for ~~the~~ the supply of energy on the recommendation of the Advisory Board. Reading these provisions together it will be clear that charges which the Advisory Board can recommend for alteration relate to the supply of energy only and do not include meter rent. This view is reinforced by the proviso to section 26(1) which lays down that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for hire ~~price of a meter and enter into an agreement~~ thereof unless the consumer elects to purchase the meter. Consequently it was not within the scope of the Advisory Board to recommend under clause XI of the Schedule alteration in the meter rent charges. Nor was it competent for Government on such recommendation to order such alternation.

3. It is true that the heading of clause 9 of the license in the present case appears to indica that the prices charged in respect of the supply

~~of supply~~ of energy include meter rent (see sub-clause (3) of clause 9); but that heading appears to be misleading and is not correct in so far as it related to meter rent. The contention A at p. 62 ante raised by the Panvel Taluka Electrical Development Co. Ltd., appears to be valid.

Sd. 3/2

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 834 dated the 5th February, 1943.

Office of the R.L.A.

I think that it is better to bring the notice under section 4(2) of the Indian Electricity Act, 1910, and for that purpose it is necessary to change the wording. The notice must say that Government is satisfied that there are sufficient grounds for revoking the license under section 4(1) but that it is pleased to permit it to remain in force for six months more subject to the condition that the licensee shall recondition his plant etc. and the notice should specifically state that the condition is imposed under section 4(2). Further if such notice takes the form of a D.O. letter I think there must be a separate formal order of Government under section 4(2) imposing the condition of reconditioning within six months.

2. I think that on another ground the license is open to objection. Government's grievances against the licensee are twofold - (1) taking an excessive load (2) failing to make adequate arrangements for maintenance. The notice calls upon the licensee to recondition "his plant at Manmad" properly and completely to the full satisfaction of the Electric Inspector, Bombay Province. In view of the above-mentioned two grievances the action required from the licensee seems somewhat inadequate or vague. It seems advisable to make more clear the amount of reconditioning required by referring it in general terms to the Company's commitments in the way of supply. And perhaps it would be advisable to call upon the Company immediately to make proper arrangements for maintenance. It is because of the two grievances above, the Government thinks it is entitled to revoke the license. It is doubtful whether the action required from the

~~frin-t- required from the~~ licensee would deal in any adequate measurewith the above two essential defects in running of the Company. But by the form of notice sent Government almost compels itself to continue the licens. provided that the licensee within the six months reconditions his plant. I think the notice ought to be more guardd. It ought, I think, ~~st~~ to call upon the licensee to take steps to deal with the above-mentioned two defects. Further it ought to say that under section 4(2) the following condition is imposed upon the licensee, namely, that he should recondition etc. Finall, the notice may state that unless necessary steps are taken to deal with the two defects above-mentioned and tofulfil the condition regarding reconditioning the lecense will be revoked.

sd. 9/2

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 64-Confl. dated the 9th Febrary 1943.

SSR=/ 6/7/56.

Office of the R.L.A.

Paragraph 5 of the trust deed is in effect an agreement to transfer. It may be that such agreement, apart from the transfer which it contemplates, requires Government sanction under section 9 of the Indian lectricity Act. It may also be that such agreement is void by reason of being combined with the void, since unsanctioned, transfer contained in paras. 2 and 3 of the trust deed. But even assuming that the agreement totransfer is not void, the Company would be entitled to sanction for the transfer envisaged by para. 5 only if the trustees demand it and only when there is a default or breach on the part of the Company. There is no reason why Government should grant sanction or even consider the question, if these conditions are not present. The Solicitors may therefore be asked whether the trustees have demanded transfer of the license and undertaking and if so what default or breach on the part of the Company has occured.

2. This is the second occasion within a few months on which the Solicitors of a licensee hafe gratuitously brought to the notice of Government that the provisions of a debenture trust may be void for want of Government sanction. The legal position seems to be that Government cannot validate such deeds if in their inception they are void. It is theoritically possible that an unscrupulous licensee might exploit that position obtaining funds by entering into agreements on terms purporting to be very favourable to the lender but really by reason of being embodied in an unsanctioned agreement, far less favourable. It is not alleged that it is so in this case. But it seems a wise precaution in such cases to do nothing without consulting all parties to the deed.

sd. 9/3

Remembrancer of Legal Affairs.

U. R. T. P. W. D. No. 1723, dt. 10-3-43.

Submitted-

2. Please see R.L.A's opinion No. 7842, dated 28/9/42 and the office note underlying. In this opinion it was held that since the Dakor-Umreth Electric Coy. has not completed all the works in the area on supply specified by clause 4 of the license. It is in the discretion of the Electrical Engineer to Government to grant or refuse permission to the Coy. to commence supply of energy to Dakor-alone, i.e. a portion of the area of the compulsory supply, under the second proviso to clause 7(A) of the license. Accordiggly the licensee Coy. was informed that request to commence supply to Dakore alone could not be granted (P.119 ante). In its letter dated 21-3-194., the licensed states that "If the Government ultimately finds that owing to the circumstances created by the war it is not at all possible to allow us to commence supply then they ~~outht~~ ought to grant us adequate compensation irrespective of whether they utilise our factory or not ... ".... The question now raised by the P.W.D. for the consideration of the R.L.A. is whether Govt. is bound to give any compensation to the licensee for its loss in consequence of the Government decision to refuse permission to commence supply of energy.

Office of the R.L.A.

The company will not be entitled to any compensation from Government for refusal of permission to commence supply of energy at Dakore only.

sd. 13/5

Remembrancer of Legal Affairs.

U.O. to P.W.D. , No. 3563, dated 15/5/1943.

375743.

Submitted.

2. On the 30th August 1942 the D.M. Kaira passed an order (p.22) directing that the Nadiad Electric Supply Coy. Ltd. shall not supply electricial energy between the hours of 1 p.m. and 7.30 p.m. and 4 a.m. to 9 a.m. ~~it~~ to any person without the special permission of the D. M Kaira. This order was subsequently modified so so far as the supply during the period from 3-10-42 to 13-10-42 was concerned so as to suit the convenience of the Muslim's Ramzan fast. On the 17th September 1942 the Government informed the Company that it does not now insis ton any reduction in the minimum charges in consequance of the restricted supply Under the terms of the Nadiad Electrical Licence, 1942, the company can levy a monthly minimum charge of Rs. 3 p.m. for the use of the energy notwithstanding that no energy has been used by the consumer during that period. A representation has been made to Government by one of the consumers that the consumer should not now be asked to pay minimum charge of Rs. 3/- p.m. since the hours of supply of energy have been reduced to 12½ hours a day. The P.W.D. proposes to inform the applicant that the question may be settled mutually by the consumers with the company and that Government does not propose to take any action in the matter. The Electrical Engineer to Government agrees with the proposal The papers. are referred to R.L.A. before the proposed reply is issued.

R. L. I think the consumers have a grievance since the minimum charge was not only reduced but increased from 1/- to Rs. 2/8. But that is not a legal question and reply may be seen & returned

R.S.H.

I agree. Reply suggested.

P.N.M. / 27/5 U.R.-10 P.W.D. No 3889 dt. 31-5-43

Office of the R.L.A.

The Mahabaleshwar Electric Supply Company has requested Government to allow it to close down the power house for a month as the plant is required to be overhauled and a duplicate plant is not available. The Mahabaleshwar Municipality and the Electrical Engineer to Government have no objection. The P.W.D. is of the view that since a duplicate plant isn not available, there would be no objection if the licensees keep stop the supply after informing the consumers of the reasons for doing so, in as much as the licensees are not held responsible for the non-supply of energy on account of occurances beyond their control under clause VI(1) of the Schedule to the Indian Electricity Act 1910. That Department also states that in case the R.L.A. considers this course to be objectionable whether there would be any objection if the D.M., Satara issue an order stopping supply of energy under rule 81(2)(a) of the ~~Department~~ Defence of India Rules. The R.L.A. is requested to advise in the matter.

2. "Clause XV of the Schedule to the Indian Electricity Act 1910, and therules thereunder allo some latitude for temporary discontinuance for testing purposes, and the licensee is protected from liability where a to stoppage of supply results from causes beyond his control (Schedule clause VI(1), substantive portion). In no other case may the supply be discontinued and if it should be, the consumer would ~~have~~ have a remedy i the Courts." (See Meares, 6th Edition, page 88). Under clause VI(1) of the Schedule he licensee wi not be liable if he is prevented from supplying energy by cyclones, floods, storms or other

or ~~other~~ occurances beyond his control. "Occurances beyond control" are presumably considered synonymous with "inevitable accidents" (ibid page 332). Consequently the closing down of the power house at Mahabaleshwar for the purpose of overhauling the plant would not be strictly permissible under the Indian Electricity Act.

3. Under sub-rule (1) of rule 81 of the Defence of Indian Rules any reference to article in that rule includes a reference to electrical energy. Under clause (a)of sub-rule (2) of rule 81 Government has power to make an order prohibiting the production and distribution of articles things of any description of it appears necessary or expendient for securing the defence of British India or the efficient prosecution of the war or for maintaining the supplies and services essential to the life of the community. If overhauling of the plant in the present case is found necessary to maintain the supply of energy at Mahabaleshwar, it would be competent either for Government or for the D.M., Satara to whom the power has been delegated, to issue an order under clause (a) of rule 81(2) prohibiting the production and distribution of energy by the Mahabaleshwar Electric supply Company for a month to enable the Company to overhaul its plant.

sd. 20/8

Remembrancer of Legal Affairs.

U.R. to the P.W.D., No. 5672, dated the 21/8/1943.

SSM / 7/7/56.

Office of the R.L.A.

The facts of the case as reported by the Electrical Engineer to Government are as follows:

A licensee has installed his own cut-outs containing fuses on a consumer's premises and affixed his own seals to the same. The consumer informs the licensee that the electrical supply to his premises has failed owing to the failure of the licensee's fuse. The licensee's wireman goes to the premises and replaces the fuse and thus recommences the supply of energy. The licensee levies a charge on the consumer for attendence of his fuseman.

The question for the consideration of the R.L.A. is whether the charge levied by the license is legitimate or whether the licensee is under direct obligation to renew the supply without any cost to the consumer; and the R.L.A. is requested to consider it with reference to the model condition of supply sanctioned by Government.

"Cut-out" as defined in rule 2(j) of the Indian Electricity Rules, 1937 means any appliance for automatically inturrupting the transmission of energy through any conductor when the current rises above a predetermined point. Rule 40 provides

"A licensee shall provide a suitable cut out in each conductor of every service line (other than earthed neutral conductor or the earthed external conductor of a concentric cable) within a consumer's premises, in an accessible position as close as possible to the point of entry. Such cut out shall be contained within an adequately enclose fireproof receptacle :

Provided that, where more than one consumer is supplied through a common service-line, each such consumer who so requires shall be provided with an endependent cut-out at the point of junction to the common service."

Under sub-clause (2) of clause VI in the schedule to the Indian Electricity Act, 1910, any

1910, any service line laid for he the pruposes of supply in pursuance of a requisition under sub-clause (1) shall notwithstanding that a protion af it may have been paid for by the person making the requisition, be maintained by the licensee. In Lahore Electric Supply Co. v. Durgadas 79 P.W.R. 1918 it has been held that cut-out constitute part of an electric supply or service line. However the question whether cut-outs form part of the service line does not appear to be of much importance in view of the condition 8 of the Model conditions of supply under which a licensee can charge only when the failure of supply is due to any cuase other than a fault in the l censee's apparatus. This condition implies that the licensee would be bound to replace the fuses in his cut-outs if they fail due tom defect in his own installation. Consequently the question material for consideration is whether the levy of char es under conditions 8 of the Model Conditions by the licensee for replacing fusesin his cut-outs which have failed due to any defect in the consumer's installation would contravene the provisions of sub-clause (2) of clause VI of the Schedule.

It is true that under sub-clause (2) of clause VI in the Schedule the licensee is required to maintain the service line and consequently he is bound to replace the fuses in his cut-outs; but he does not dispute that liability and carries it out immediately by sending his employe as soon as he receives notice of failure of such fuse. What he does after replacing such fuses is to claim to recover under condition 8 of the Model Conditions the charges of such replacement

~~replacement~~ from the consumer provided the failure of supply is due to any cause other than a fault in the licensee's apparatus. The idmediate cause of the failure of supply is the blowing of the cut-out. But that is not a defect in the cut-out. It is the function of the cut-out to blow then the current rises above a certain point. The part of the apparatus which is at fault is that which causes the current to rise above the safety level. If the failure of the fuses in the licensee's cut-outs is due to a defect in the cunsumer's apparatus it would be reasonable for the licensee to recover chargesfor replacing the fuses from the consumer. Consequently it appears that condition 8 of the Model Conditions does not in any way conflict with sub-clause (2) clause VI in the Schedule.

Sd. G/G

Remembrancer of Legal Affairs.

U.H. to P.W.D., No. 6009, dated the 7th Sept., 1943.

SSM / 7/7/56.

Submitted.

2. The question of interpreting Government Order No. 6041/36, dated the 11-3-43, has been raised by the Sinnar Electric Supply Co. Ltd,, which holds that the Company is entitled to levy a surcharge even on meter rent charged by the Company to the consumers. The P.W.D. thinks that the surcharge is not leviable on the leter matter rent. The A.L.A. is requested to advise whether the view taken by the P.W.D. is correct.

3. The Sinnar Electric Supply Co., Ltd., being not under the control of Government, is not entitled to any advice from the Government especially in the matters of their relations with the consumers. The Co. should consult their own legal advisers on matte s relating to their delaings with the consumers. But since the P.W.D. is inclined to give a reply to the Company it is for orders whether the case may be noted upon on matter

(From the L.D. papers put up below, it will be seen that the Nadiad Borough Municipality has filed a suit with reference to the said Govt. order against the Nadiad Electric Co. Ltd. challanging the action of the Company in levying surcharge on the energy supplied to the Municipality).

A may be done. We may refer to RE & C in our reply.

sd. 20/9

Office of the R.L.A.

Clause 14 of the Agreement provides that all the disputes should be referred to an arbitrator "to be appointed by- the Electrical Inspector to Government, Bombay". It is presumed that the Electrical Engineer to Govt. has been appointed under the provisions of section 3 26(2) of the Indian Electricity Act, 1910 to be an Electric Inspector for the Province of Bombay and that no other Electric Inspector has been appointed for the area within which the dispute has arisen. If the position is otherwise the Manmad Electric Supply Company might well object to the nomination of an arbitrator by the Electrical Engineer to Government. Before Government decide to copply with the request of the Railway Company it would be adviseable to ascertain the views of the Manmad Electric Supply Company regarding the appointment of an arbitrator.

sd. 7/10

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 6765, dated the 9th Oct., 1943.

SSM 7/7/56.

R.I. No. 9987
18-10-43
19

Submitted.

Please see letter of the Dharwar Electric Supply Co., Ltd., at page 1 ante. The Company desires to be enlightned on the following points :-

(1) Whether the sanctioned rates for supply of energy form a part of the Conditions of Supply ?

(2) Whether Section 21(2) of the Indian Electricity Act, 1910 governs the rates of supply of energy.

The P.W.D. in para 2 of its note at page 4 ante states that by the 'sanctioned' rate the Company apparently means the maximum rates for supply prescribed in the license and that the Company being at liberty to fix the rates within these maxima, such rates as are determined by them are excluded from the conditions of supply etc. . That department, therefore proposes to inform the Company that the maxima rates are prescribed in the license under clause (i) of section 3(2)(c) of the Indian Electricity Act, 1910 and that they do not form part of "Conditions of Supply" requiring sanction of Government under section 21(2) of the Act. The papers are shown to the R.L.A. for his advice.

The view at A of P.W.D. office note dated 12-10-43 at p. 4 ante is correct (see Adv. General's opinion No.31, dated 13-8-40, a copy of which was sent along with R.L.A.'s No. 7441, dated 19-8-40)."

A.L.R. R.T.E.
2/11
I agree

R.L.A. P.N.M. 4/11
I agree.

U.R. to P.W.D. No. 8216 dated 8-11-1943.

Submitted.

2. Please see R.L.A's opinions Nos. 5128, dated 6-6-41 and 248, dated 11-1-43. In the latter opinion it was pointed out that the licence, if the sale to Mr. Sardesai is valid, is already transferred to him by the sale, subject to Govt.'s consent under sec. 9(2) of the Indian Electricity Act, 1910 and if the court holds the transfer invalid on grounds of irregularities of sale, the facts that Government consented under se. 9(2) will embarass neither itself nor the court. It was thereupon decided to give necessary consent to the assignent of the license and the draft memo of consent was scruitnized by the Solicitor in L.D. (u.R. No. 561, dated 22-1-43) Later it appears that the Receiver applied to the Electrical Commr. with the Govt. of India for canction to dispose of the plant etc. to Mr. Sirdesai and the same has been now granted. P.W.D. now repeates all the facts stating that the Bagalkot Electric License was first granted to Mr. Nerurkar who assigned it to Messrs. Gugwad & Co. with the consent of Govt. That the latter mortagaged their undertaking to Messrs Sakri Bros. for Rs. 800,000/-; that the properties of Messrs. Gugwad & Co. were sold free from all encumbrances; that the memo of consent in respect of the two above transaction have not been forwarded by the Receiver and that it does not seem necessary for Govt. to go into these matters. R.L.A. is requested to advise whether he agrees with the view expressed in P.W.D. office note dated 27-5-43 and if so, whether the proposed orders regarding consent under sec. 9(2) of the Indian

~~the Indian~~ Electricity Act, 1910, to the assignment and transfer by the Receiver of the license and its undertaking by way of sale to Mr. Sardesai may be issued.

Seen and returned.

There appears no objection to issuing the proposed order under sect. 9(2) of the Indian Electricity Act, 1910.

L.P.

A.L.R. R.S.H
2/6

R.L.A. P.N.H.
4/6

U.R. to P.W.D. No. 4046 dated 7-6-1943.

SSH / 7/7/56.